

The Preservation of Federalism in Banking Act

Generally the Preservation of Federalism in Banking Act would amend the National Bank Act to clarify the relationship between states and national banks.

Preemption Standard

- Protect Consumer Protection Laws of General Application. Notwithstanding other federal law, State consumer protection laws of general application, including but not limited to unfair deceptive acts or practices or consumer fraud statutes, shall be deemed to apply to national banks.
- Protect State Laws Enacted Pursuant to Federal Permission. “State ‘banking’ laws enacted pursuant to federal laws that permit states to enact laws beyond federal standards (such as Title V of the Gramm-Leach Bliley Act and the Consumer Credit Protection Act) will apply to national banks unless: (1) the state law discriminates against national banks; or (2) is inconsistent with any other provision of Federal law (but only to the extent of the inconsistency). (The agency with primary responsibility over that federal law will determine if the questionable state law is “inconsistent.”).
- No “Negative Implication” Provision. Nothing in the Preservation of Federalism in Banking Act shall be construed as affecting the applicability to national banks of other state laws (not addressed above).

Visitorial Standard

Provide that the National Bank Act shall not be construed as limiting the ability of state Attorneys General to bring any court action to (1) enforce applicable federal or state law as authorized by such laws or (2) bring civil action on behalf of state residents to enforce (or recover damages) for the violation of such laws.

Section 1983

Clarify that national bank “preemption” is not a “civil right” protected by section 1983.

Operating Subsidiaries

Provide that the National Bank Act shall not be construed as preempting the application of state law to any nondepository institution subsidiary of a national bank unless the preemption is explicitly provided in an Act of Congress.

OCC Data Collection and Reporting

Require the OCC to regularly record, monitor and report its resolution of consumer complaints.